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ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ORACLE AMERICA, INC., a Delaware  
corporation,

Plaintiff,

v.

SERVICE KEY, LLC, a Georgia limited  
liability company; ANGELA VINES; DLT  
FEDERAL BUSINESS SYSTEMS  
CORPORATION, a Delaware corporation; and  
DOES 1-50,

Defendants.

No. 4:12-cv-00790-SBA

**PLAINTIFF ORACLE AMERICA,  
INC.'S REPLY BRIEF CONCERNING  
ITS MOTION TO STRIKE  
DEFENDANT DLT-FBS'S  
COUNTERCLAIMS AND  
AFFIRMATIVE DEFENSE**

Date: April 16, 2013  
Time: 1:00 p.m.  
Place: Courtroom 1, 4th Floor  
Judge: Hon. Sandra B. Armstrong

1 This Court's Standing Order is clear: "The failure of the opposing party to file a  
 2 memorandum of points and authorities in opposition to any motion shall constitute a consent to  
 3 the granting of the motion." Here, Oracle filed its Motion to Strike DLT-FBS's untimely  
 4 affirmative defenses and counterclaims on February 20, 2013. D.I. 158. DLT-FBS's opposition  
 5 was due on March 6, 2013. On that afternoon, DLT-FBS's counsel asked Oracle for a two day  
 6 extension to file its opposition due to a heavy snowstorm. *See* Exhibit A to the Declaration of  
 7 Kyle Zipes (3/6/13 email from Whitticar to Hixson and Zipes). Oracle agreed to the request. Ex.  
 8 B (3/7/13 email from Zipes to Whitticar). But despite this extension, DLT-FBS failed to file any  
 9 opposition. Instead, its counsel filed a motion to withdraw. D.I. 163. This was the second time  
 10 DLT-FBS's counsel have sought to withdraw in this action without good reason. *See* D.I. 117  
 11 (Motion to Withdraw) *and* D.I. 131 (Order denying Motion to Withdraw). Regardless, DLT-  
 12 FBS's counsel remain its counsel of record until and unless the Court grants its motion to  
 13 withdraw, which it has not done, and they were aware of the deadline to oppose Oracle's motion.  
 14 Accordingly, pursuant to the Court's Standing Order, DLT-FBS's failure to file any opposition  
 15 should be considered consent to the granting of Oracle's motion.

16 DATED: March 13, 2013

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 18 Bingham McCutchen LLP

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